

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION**

**CHARLES C. JACOBS, JR., and  
ROSEMARY W. JACOBS**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO. 2:09cv132-B-S**

**CONSECO, INC., CDOC INC., WASHINGTON  
NATIONAL INSURANCE COMPANY, CONSECO  
SERVICES, LLC, AND CONSECO LIFE  
INSURANCE COMPANY**

**DEFENDANTS**

**ORDER**

This matter is before the court on the motion of the defendants for leave to depose plaintiff Charles E. Jacobs (#152). This motion is based on a change in the plaintiff's status as a witness at trial from a "will call" to a "may call" witness. The court recognizes that this presents a hardship on the defendants, but the court does not differentiate between a discovery deposition and a trial deposition. As such, the defendants request to conduct an additional deposition of the plaintiff is not well-taken.

The court, recognizing the disadvantage to the defendants, will allow the defendants until Monday, March 21, 2011, to designate portions of Mr. Jacobs deposition taken on June 7, 2010, to be used at trial in the event that Mr. Jacobs' unavailability is established. *Delgado v. City of El Campo*, 68 F.3d 471 (5<sup>th</sup> Cir. 1995) (noting a party's obligation to adequately establish that a witness is unavailable for trial).

IT IS, THEREFORE, ORDERED that the motion for leave to depose plaintiff Charles C. Jacobs (# 152) is hereby DENIED. Defendants shall have until Monday, March 21, 2011, to designate portions of Mr. Jacobs deposition to be used at trial.

SO ORDERED, this the 16<sup>th</sup> day of March 2011.

/s/ David A. Sanders  
UNITED STATES MAGISTRATE JUDGE